IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:25.10.2017

CORAM

The Hon'ble Mr.Justice **M.V.MURALIDARAN**

CRP.No.789 of 2006
and
C.M.P.Nos.322 and 323 of 2013

1.Ayesha Bivi(deceased)
2.S.Ramshad Begum
3.Mohammed Ayub
4.Sweya Begum
(Petitioners 2 to 4 are brought on record as legal representatives of the deceased sole petitioner vide order of the Court dated 01.02.2011 made in C.M.P.Nos.503 to 505 of 2010)

.. Petitioners

vs.

1.Balakrishna Padayachi (died)
2.Sethuraman (died)
3.Masilamani (deceased)
4.Vasantha
5.Hamasavalli
6.Govindasamy
7.Mohan
8.Ravichandran
9.S.Shanthi
10.S.Kalyanasundaram
11.S.Malliga
12.Vijayakumari
13.Jayachitra
(RR7 to 13 brought on record as LRs of the deceased 2nd respondent vide order of Court dated 03.01.2017 by MVMJ made in CMP.Nos.321 to 323 in CRP(NPD).No.789/2006)

14.M.Vijaya
15.Thirumalvalavan

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16.Maruthavanan
17.M.Gopalakrishnan
(RR14 to 17 brought on records as LRs of deceased 3rd respondent viz., Masilamani vide order of Court dated 24/07/2017, C.M.P.No.9313/17 and 9314/17 in CRP.No.789/2006)

.. Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, against the order of the learned District Munsif-cum-Judicial Magistrate, Parangipettai, dated 31.01.2006 made in E.P.No.14 of 2005 in O.S.No.777 of 1981.

For Petitioners :Mr.W.M.Abdul Majeed
for M/s.G.Sumitra
For Respondents :Mr.R.Sunil Kumar
for R1 and R5

ORDER

This petition is filed against the order of the learned District Munsif-cum-Judicial Magistrate, Parangipettai, dated 31.01.2006 made in E.P.No.14 of 2005 in O.S.No.777 of 1981.

2. Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondents.

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3. The contention of the petitioners is that the respondents herein have filed a suit in O.S.No.777 of 1981, against the petitioner herein before the District Munsif Court, Chidambaram to execute and

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register a sale deed in pursuance of an agreement dated 29.07.1971 in respect of Nanja land in R.S.No.173/2, Manjakuli Village, Chidambaram Taluk. The said suit was dismissed on 06.09.1989. Against which the respondents preferred an appeal in A.S.No.22 of 1989 and the same was allowed on 28.02.1991, thereby decreeing the suit. Against which, the petitioner preferred second appeal in S.A.No.1077 of 1991 before this court and the same was dismissed on 09.10.2001.

4. Based on the decree, the respondent filed in E.P.No.9 of 2004 in O.S.No.777 of 1981 to direct the petitioner herein to execute the sale deed in favour of the respondents. However, this petition was dismissed as not pressed on 21.06.2005. Again, the respondents preferred another E.P.No.14 of 2005 in O.S.No.777 of 1981 and the same was allowed by directing the petitioner herein to execute the sale deed in respect of the suit property. Aggrieved by the said order, the petitioner has filed the Civil Revision Petition.

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5. The learned counsel appearing for the petitioner submits that the District Munsif Court failed to appreciate that the plaint contained only one item namely 2 acres but it included several items, which

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were not even in the prayer of the suit. Further, it is submitted that the trial court has no jurisdiction to execute the decree and the Trial Court should have rejected the execution petition in limini. Therefore, he prays to allow the petition.

6. The learned counsel appearing for the respondents admitted that in the Execution Petition it is mentioned as if there are 2 items of the properties. Though the same property namely 2 acres with 4 boundaries is given twice as two items, their entitlement is only for one item i.e., for an extent of 2 acres and he also categorically stated that the respondents are not entitled for anything more than 2 acres. Further, the suit is of the year 1991. Despite, the respondents obtained decree, they are not able to get the sale deed executed for last more than 16 years. It is contended that the respondents deposited the sale price into the court almost 12 years back and the property is being enjoyed by the petitioner till date. Hence, he prays this Court to pass an appropriate order.

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7. It is not disputed the fact that the subject matter of suit is only 2 acres and respondents are entitled for specific performance only in respect of southern 2 acres of northern 4.50 acres out of 7.24

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acres and they are entitled for anything more than 2 acres in RS.No.173 /2 as per the prayer of the plaint and decree.

8. Considering the above facts and circumstances of the case, this Court is inclined to allow this petition. Accordingly, the petition is allowed by setting aside the order dated 31.01.2006 in E.P.No.14 of 2005 in O.S.No.777 of 1981 on the file of the learned District Munsif-cum-Judicial Magistrate, Parangipettai. The Execution Court is directed to pass appropriate orders, by giving notice to both the parties in E.P.No.14 of 2005 in O.S.No.777 of 1981 dated 31.01.2006 on the file of the learned District Munsif-cum-Judicial Magistrate, Parangipettai in respect of decree in O.S.No.777 of 1981 suit schedule of property. The above said exercise shall be done within a period of 30 days from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

26.10.2017

Index:Yes/No
Internet:Yes/No
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Note: Issue order copy on 30.10.2017

To

The learned District Munsif-cum-Judicial Magistrate,
Parangipettai.

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M.V.MURALIDARAN, J.

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